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17 Zodiac Water & Waste Aero Systems

18 **UNITED STATES DISTRICT COURT**

19 **CENTRAL DISTRICT OF CALIFORNIA**

20 PRECISE AEROSPACE
MANUFACTURING, INC., a
21 California corporation, ROXANNE
ABDI, an individual,

22 Plaintiffs,

23 v.

24 MAG AEROSPACE INDUSTRIES,
25 LLC DBA ZODIAC WATER &
WASTE AERO SYSTEMS, a limited
26 liability company, and DOES 1-10

27 Defendants.
28

Case No. 2:17-cv-01239-RGK-AJW

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Discovery Matter Referred to
Magistrate Judge Andrew J. Wistrich

1 The Court, having reviewed the Stipulation for Protective Order entered into
2 among Plaintiffs Precise Aerospace Manufacturing, Inc. and Roxanne Abdi and
3 Defendant MAG Aerospace Industries, LLC dba Zodiac Waste & Water Aero
4 Systems finds that good cause exists to enter an order approving said Stipulation for
5 Protective Order.

6
7 Accordingly, IT IS HEREBY ORDERED as follows:

8
9 1. PURPOSES AND LIMITATIONS

10
11 Disclosure and discovery activity in this action are likely to involve
12 production of confidential, proprietary, or private information for which special
13 protection from public disclosure and from use for any purpose other than
14 prosecuting this litigation may be warranted. Accordingly, the parties have
15 stipulated to and petitioned the court to enter this Stipulated Protective Order. The
16 parties acknowledge that this Order does not confer blanket protections on all
17 disclosures or responses to discovery and that the protection it affords from public
18 disclosure and use extends only to the limited information or items that are entitled
19 to confidential treatment under the applicable legal principles. The parties further
20 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
21 Order does not entitle them to file confidential information under seal; Local Civil
22 Rule 79-5 sets forth the procedures that must be followed when a party seeks
23 permission from the court to file material under seal.

24
25 2. DEFINITIONS

26
27 2.1 Challenging Party: a Party or Non-Party that challenges the
28 designation of information or items under this Order.

1 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
2 how it is generated, stored or maintained) or tangible things that qualify for
3 protection under Federal Rule of Civil Procedure 26(c).
4

5 2.3 Counsel (without qualifier): Outside Counsel of Record and House
6 Counsel (as well as their support staff).
7

8 2.4 Designating Party: a Party or Non-Party that designates information or
9 items that it produces in disclosures or in responses to discovery as
10 “CONFIDENTIAL.”
11

12 2.5 Disclosure or Discovery Material: all items or information, regardless
13 of the medium or manner in which it is generated, stored, or maintained (including,
14 among other things, testimony, transcripts, and tangible things), that are produced or
15 generated in disclosures or responses to discovery in this matter.
16

17 2.6 Expert: a person with specialized knowledge or experience in a matter
18 pertinent to the litigation who has been retained by a Party or its counsel to serve as
19 an expert witness or as a consultant in this action.
20

21 2.7 House Counsel: attorneys who are employees of a party to this action.
22 House Counsel does not include Outside Counsel of Record or any other outside
23 counsel.
24

25 2.8 Non-Party: any natural person, partnership, corporation, association, or
26 other legal entity not named as a Party to this action.
27

28 2.9 Outside Counsel of Record: attorneys who are not employees of a

1 party to this action but are retained to represent or advise a party to this action and
2 have appeared in this action on behalf of that party or are affiliated with a law firm
3 which has appeared on behalf of that party.

4
5 2.10 Party: any party to this action, including all of its officers, directors,
6 employees, consultants, retained experts, and Outside Counsel of Record (and their
7 support staffs).

8
9 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
10 Discovery Material in this action.

11
12 2.12 Professional Vendors: persons or entities that provide litigation
13 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)
15 and their employees and subcontractors.

16
17 2.13 Protected Material: any Disclosure or Discovery Material that is
18 designated as “CONFIDENTIAL.”

19
20 2.14 Receiving Party: a Party that receives Disclosure or Discovery
21 Material from a Producing Party.

22
23 3. SCOPE
24

25 The protections conferred by this Stipulation and Order cover not only
26 Protected Material (as defined above), but also (1) any information copied or
27 extracted from Protected Material; (2) all copies, excerpts, summaries, or
28 compilations of Protected Material; and (3) any testimony, conversations, or

1 presentations by Parties or their Counsel that might reveal Protected Material.
2 However, the protections conferred by this Stipulation and Order do not cover the
3 following information: (a) any information that is in the public domain at the time of
4 disclosure to a Receiving Party or becomes part of the public domain after its
5 disclosure to a Receiving Party as a result of publication not involving a violation of
6 this Order, including becoming part of the public record through trial or otherwise;
7 and (b) any information known to the Receiving Party prior to the disclosure or
8 obtained by the Receiving Party after the disclosure from a source who obtained the
9 information lawfully and under no obligation of confidentiality to the Designating
10 Party. Any use of Protected Material at trial shall be governed by a separate
11 agreement or order.

12 13 4. DURATION

14
15 Even after final disposition of this litigation, the confidentiality obligations
16 imposed by this Order shall remain in effect until a Designating Party agrees
17 otherwise in writing or a court order otherwise directs. Final disposition shall be
18 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
19 or without prejudice; and (2) final judgment herein after the completion and
20 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
21 including the time limits for filing any motions or applications for extension of time
22 pursuant to applicable law.

23 24 5. DESIGNATING PROTECTED MATERIAL

25 26 5.1 Exercise of Restraint and Care in Designating Material for Protection.

27 Each Party or Non-Party that designates information or items for protection under
28 this Order must take care to limit any such designation to specific material that

1 qualifies under the appropriate standards. The Designating Party must designate for
2 protection only those parts of material, documents, items, or oral or written
3 communications that qualify – so that other portions of the material, documents,
4 items, or communications for which protection is not warranted are not swept
5 unjustifiably within the ambit of this Order.

6
7 Mass, indiscriminate, or routinized designations are prohibited. Designations
8 that are shown to be clearly unjustified or that have been made for an improper
9 purpose (e.g., to unnecessarily encumber or retard the case development process or
10 to impose unnecessary expenses and burdens on other parties) expose the
11 Designating Party to sanctions.

12
13 If it comes to a Designating Party’s attention that information or items that it
14 designated for protection do not qualify for protection, that Designating Party must
15 promptly notify all other Parties that it is withdrawing the mistaken designation.

16
17 5.2 Manner and Timing of Designations. Except as otherwise provided in
18 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
19 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
20 under this Order must be clearly so designated before the material is disclosed or
21 produced.

22
23 Designation in conformity with this Order requires:

24
25 (a) for information in documentary form (e.g., paper or electronic documents,
26 but excluding transcripts of depositions or other pretrial or trial proceedings), that
27 the Producing Party affix the legend “CONFIDENTIAL” to each page that contains
28 protected material. If only a portion or portions of the material on a page qualifies

1 for protection, the Producing Party also must clearly identify the protected portion(s)
2 (e.g., by making appropriate markings in the margins).

3
4 A Party or Non-Party that makes original documents or materials available for
5 inspection need not designate them for protection until after the inspecting Party has
6 indicated which material it would like copied and produced. During the inspection
7 and before the designation, all of the material made available for inspection shall be
8 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
9 documents it wants copied and produced, the Producing Party must determine which
10 documents, or portions thereof, qualify for protection under this Order. Then, before
11 producing the specified documents, the Producing Party must affix the
12 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a
13 portion or portions of the material on a page qualifies for protection, the Producing
14 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
15 markings in the margins).

16
17 (b) for testimony given in deposition or in other pretrial or trial proceedings,
18 that the Designating Party identify on the record, before the close of the deposition,
19 hearing, or other proceeding, all protected testimony.

20
21 (c) for information produced in some form other than documentary and for
22 any other tangible items, that the Producing Party affix in a prominent place on the
23 exterior of the container or containers in which the information or item is stored the
24 legend “CONFIDENTIAL.” If only a portion or portions of the information or item
25 warrant protection, the Producing Party, to the extent practicable, shall identify the
26 protected portion(s).

27
28 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent

1 failure to designate qualified information or items does not, standing alone, waive
2 the Designating Party's right to secure protection under this Order for such material.
3 Upon timely correction of a designation, the Receiving Party must make reasonable
4 efforts to assure that the material is treated in accordance with the provisions of this
5 Order.

6
7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8
9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
10 designation of confidentiality at any time. Unless a prompt challenge to a
11 Designating Party's confidentiality designation is necessary to avoid foreseeable,
12 substantial unfairness, unnecessary economic burdens, or a significant disruption or
13 delay of the litigation, a Party does not waive its right to challenge a confidentiality
14 designation by electing not to mount a challenge promptly after the original
15 designation is disclosed.

16
17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
18 resolution process by providing written notice of each designation it is challenging
19 and describing the basis for each challenge. To avoid ambiguity as to whether a
20 challenge has been made, the written notice must recite that the challenge to
21 confidentiality is being made in accordance with this specific paragraph of the
22 Protective Order. The parties shall attempt to resolve each challenge in good faith
23 and must begin the process by conferring directly (in voice to voice dialogue; other
24 forms of communication are not sufficient) within 10 days of the date of service of
25 notice. In conferring, the Challenging Party must explain the basis for its belief that
26 the confidentiality designation was not proper and must give the Designating Party
27 an opportunity to review the designated material, to reconsider the circumstances,
28 and, if no change in designation is offered, to explain the basis for the chosen

1 designation. A Challenging Party may proceed to the next stage of the challenge
2 process only if it has engaged in this meet and confer process first or establishes that
3 the Designating Party is unwilling to participate in the meet and confer process in a
4 timely manner.

5
6 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
7 court intervention, the Designating Party shall file and serve a motion to retain
8 confidentiality under Local Civil Rule 7 and 37 (and in compliance with Local Civil
9 Rule 79-5, if applicable). The Designating Party shall initiate the procedures set
10 forth in Local Civil Rule 37-2.2 within 21 days of the initial notice of challenge or
11 within 14 days of the parties agreeing that the meet and confer process will not
12 resolve their dispute, whichever is earlier. The motion shall be set for hearing on the
13 first possible date once the procedures set forth in Local Civil Rule 37-2.2 are
14 completed. Each such motion must be accompanied by a competent declaration
15 affirming that the movant has complied with the meet and confer requirements
16 imposed in the preceding paragraph and Local Civil Rule 37-1. Failure by the
17 Designating Party to initiate the procedures set forth in Local Civil Rule 37-2.2
18 within 21 days (or 14 days, if applicable) shall automatically waive the
19 confidentiality designation for each challenged designation. In addition, the
20 Challenging Party may file a motion challenging a confidentiality designation at any
21 time if there is good cause for doing so, including a challenge to the designation of a
22 deposition transcript or any portions thereof. Any motion brought pursuant to this
23 provision must be accompanied by a competent declaration affirming that the
24 movant has complied with the meet and confer requirements imposed by the
25 preceding paragraph.

26
27 The burden of persuasion in any such challenge proceeding shall be on the
28 Designating Party. Frivolous challenges, and those made for an improper purpose

(e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to

1 disclose the information for this litigation;

2
3 (b) the officers, directors, and employees (including House Counsel) of the
4 Receiving Party to whom disclosure is reasonably necessary for this litigation and
5 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A to
6 Stipulation for Protective Order);

7
8 (c) Experts (as defined in this Order) of the Receiving Party to whom
9 disclosure is reasonably necessary for this litigation and who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A to Stipulation for
11 Protective Order););

12
13 (d) the court and its personnel;

14
15 (e) court reporters and their staff, professional jury or trial consultants, mock
16 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
17 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
18 (Exhibit A to Stipulation for Protective Order););

19
20 (f) during their depositions, witnesses in the action to whom disclosure is
21 reasonably necessary and who have signed the “Acknowledgment and Agreement to
22 Be Bound” (Exhibit A to Stipulation for Protective Order);), unless otherwise agreed
23 by the Designating Party or ordered by the court. Pages of transcribed deposition
24 testimony or exhibits to depositions that reveal Protected Material must be
25 separately bound by the court reporter and may not be disclosed to anyone except as
26 permitted under this Stipulated Protective Order.

27
28 (g) the author or recipient of a document containing the information or a

1 custodian or other person who otherwise possessed or knew the information.

2
3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
4 PRODUCED IN OTHER LITIGATION

5
6 If a Party is served with a subpoena or a court order issued in other litigation
7 that compels disclosure of any information or items designated in this action as
8 “CONFIDENTIAL,” that Party must:

9
10 (a) promptly notify in writing the Designating Party. Such notification shall
11 include a copy of the subpoena or court order;

12
13 (b) promptly notify in writing the party who caused the subpoena or order to
14 issue in the other litigation that some or all of the material covered by the subpoena
15 or order is subject to this Protective Order. Such notification shall include a copy of
16 this Stipulated Protective Order; and

17
18 (c) cooperate with respect to all reasonable procedures sought to be pursued
19 by the Designating Party whose Protected Material may be affected.

20
21 If the Designating Party timely seeks a protective order, the Party served with
22 the subpoena or court order shall not produce any information designated in this
23 action as “CONFIDENTIAL” before a determination by the court from which the
24 subpoena or order issued, unless the Party has obtained the Designating Party’s
25 permission. The Designating Party shall bear the burden and expense of seeking
26 protection in that court of its confidential material – and nothing in these provisions
27 should be construed as authorizing or encouraging a Receiving Party in this action
28 to disobey a lawful directive from another court.

1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED IN THIS LITIGATION

3
4 (a) The terms of this Order are applicable to information produced by a Non-
5 Party in this action and designated as “CONFIDENTIAL.” Such information
6 produced by Non-Parties in connection with this litigation is protected by the
7 remedies and relief provided by this Order. Nothing in these provisions should be
8 construed as prohibiting a Non-Party from seeking additional protections.

9
10 (b) In the event that a Party is required, by a valid discovery request, to
11 produce a Non-Party’s confidential information in its possession, and the Party is
12 subject to an agreement with the Non-Party not to produce the Non-Party’s
13 confidential information, then the Party shall:

14
15 (1) promptly notify in writing the Requesting Party and the Non-Party that
16 some or all of the information requested is subject to a confidentiality agreement
17 with a Non-Party;

18
19 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
20 Order in this litigation, the relevant discovery request(s), and a reasonably specific
21 description of the information requested; and

22
23 (3) make the information requested available for inspection by the Non-
24 Party.

25
26 (c) If the Non-Party fails to object or seek a protective order from this court
27 within 14 days of receiving the notice and accompanying information, the Receiving
28 Party may produce the Non-Party’s confidential information responsive to the

1 discovery request. If the Non-Party timely seeks a protective order, the Receiving
2 Party shall not produce any information in its possession or control that is subject to
3 the confidentiality agreement with the Non-Party before a determination by the
4 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
5 expense of seeking protection in this court of its Protected Material.

6
7 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL
8

9 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
10 Protected Material to any person or in any circumstance not authorized under this
11 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
12 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
13 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
14 persons to whom unauthorized disclosures were made of all the terms of this Order,
15 and (d) request such person or persons to execute the “Acknowledgment and
16 Agreement to Be Bound” that is attached to Stipulation for Protective Order as
17 Exhibit A.
18

19 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
20 OTHERWISE PROTECTED MATERIAL
21

22 When a Producing Party gives notice to Receiving Parties that certain
23 inadvertently produced material is subject to a claim of privilege or other protection,
24 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
25 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
26 may be established in an e-discovery order that provides for production without
27 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
28 as the parties reach an agreement on the effect of disclosure of a communication or

1 information covered by the attorney-client privilege or work product protection, the
2 parties may incorporate their agreement in the stipulated protective order submitted
3 to the court.

4
5 12. MISCELLANEOUS

6
7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
8 person to seek its modification by the court in the future.

9
10 12.2 Right to Assert Other Objections. By stipulating to the entry of this
11 Protective Order no Party waives any right it otherwise would have to object to
12 disclosing or producing any information or item on any ground not addressed in this
13 Stipulated Protective Order. Similarly, no Party waives any right to object on any
14 ground to use in evidence of any of the material covered by this Protective Order.

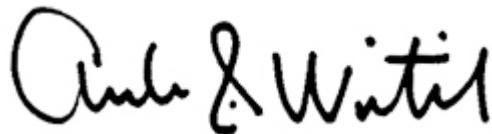
15
16 12.3 Filing Protected Material. Without written permission from the
17 Designating Party or a court order secured after appropriate notice to all interested
18 persons, a Party may not file in the public record in this action any Protected
19 Material. A Party that seeks to file under seal any Protected Material must comply
20 with Local Civil Rule 79-5. Protected Material may only be filed under seal
21 pursuant to a court order authorizing the sealing of the specific Protected Material at
22 issue. Pursuant to Local Civil Rule 79-5, a sealing order will issue only upon a
23 request establishing that the Protected Material at issue is privileged, protectable as
24 a trade secret, or otherwise entitled to protection under the law. If a Receiving
25 Party's request to file Protected Material under seal pursuant to Local Civil Rule 79-
26 5.2.2(b) is denied by the court, then the Receiving Party may file the information in
27 the public record pursuant to Local Civil Rule 79-5.2.2(b)(ii) unless otherwise
28 instructed by the court.

1 13. FINAL DISPOSITION

2
3 Within 60 days after the final disposition of this action, as defined in
4 paragraph 4, each Receiving Party must return all Protected Material to the
5 Producing Party or destroy such material. As used in this subdivision, “all Protected
6 Material” includes all copies, abstracts, compilations, summaries, and any other
7 format reproducing or capturing any of the Protected Material. Whether the
8 Protected Material is returned or destroyed, the Receiving Party must submit a
9 written certification to the Producing Party (and, if not the same person or entity, to
10 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
11 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
12 that the Receiving Party has not retained any copies, abstracts, compilations,
13 summaries or any other format reproducing or capturing any of the Protected
14 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
15 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
16 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
17 work product, and consultant and expert work product, even if such materials
18 contain Protected Material. Any such archival copies that contain or constitute
19 Protected Material remain subject to this Protective Order as set forth in Section 4
20 (DURATION).

21
22 PURSUANT TO STIPULATION, IT IS SO ORDERED.

23
24
25 DATED: June 7, 2017



Honorable Andrew J. Wistrich
Magistrate Judge

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